IN THE HIGH COURT OF DELHI

C.R.P.No.1150/2003

Ms.Urvashi Aggarwal & Anr. ..... Petitioners

VERSUS

$ Smt. Suraj Kumari & Ors. ..... Respondents

C.R.P.No.1154/2003

Ms.Urvashi Aggarwal & Anr. ..... Petitioners

VERSUS

$ Smt. Suraj Kumari & Ors. ..... Respondents

! Present : Mr.Shanti Bhushan, Sr. Adv. with
Mr.Sudhir K.Makkar, Adv.
for the petitioners.

Mr.A.S.Chandhiok, Sr. Adv. with
Mr.Suhail Dutt, Mr.Mahesh Chibber,
Mr.Ranjeet Kanjha, Advs.
for the respondents.

% DATE OF DECISION: 23.07.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Vide CRP No.1150/2003 petitioners have challenged the order dated 17.9.2003 dismissing an application dated 25.2.2002 filed by the petitioners under Order 22 Rule 4 CPC

praying that Kushagr Ansal, grandson of deceased defendant No.1 be brought on record as a defendant. I note that vide said application prayer was also made to condone the delay in filing the said application.

2. The application of the petitioner has been dismissed holding that the suit stood abated and no explanation was forthcoming justifying delay to be condoned. It has been held that there has been an inordinate delay in seeking impleadment of Kushagr Ansal as a legal representative of deceased defendant No.1.

3. Order challenged in CRP No.1154/2003 is an order of even date dismissing application dated 19.2.2001 filed by the petitioners to implead the 6th natural legal heir of deceased defendant No.1. Reason thereof is that the said natural legal heir had admitted that the deceased had executed a will in respect of the suit property in favour of her grandson Kushagr Ansal and hence could not be impleaded as defendants.

4. As would be evident from the facts hereinafter, the usual attempts by the defendants to put obstacles and hope that somehow or the other, the plaintiff trips and hence loses the race is what has happened in the instant case; albeit with some assistance from the plaintiffs who remained casual in their approach.

5. Indeed, the bane of the legal system in India is the

complex web of procedural laws which are sometimes used with lethal effect by a defendant to trip the plaintiff. Needless to state, to succeed in a suit, the plaintiff has to cover the entire journey from the start till the end. The defendant has not to run in the said race. As long as the defendant is able to prevent the plaintiff from reaching the destination point, the defendant succeeds in his mission.

6. If the plaintiff has to run 100 Km and he successfully runs 99.999 Km but fails to take the last step over the finishing line which is just about a meter away, the plaintiff loses the race. The defendant is declared the winner – by default.

7. It is on account of the aforesaid reasons that Courts in India have interpreted procedural laws with a purpose and a meaning which furthers, not hampers, the cause of substantive justice.

8. Reported decisions can be found in abundant measure holding that rules of procedure are the handmaid of justice. That the language of the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice.

9. There are numerous decisions which hold that in an adversial system, no party should be denied an opportunity of participating in the process of justice dispensation unless compelled by an express or specific language of the statute.

10. In the report published as 1975 (1) SCC 774 *Sushil Kumar Singh vs. State of Bihar*, the Supreme Court cautioned that too much or over emphasis to procedure should be avoided because the humanist rule is that procedure should be the handmaid, not the mistress of justice. This compels the vesting of a residuary power in Judges to act *ex debito justiciae* where the tragic sequel otherwise would be wholly inequitable. It was opined that justice is the goal of jurisprudence – processual as much as substantive.

11. Indeed, procedural laws are the servant and not the master in a justice delivery system. Procedure laws are lubricants and not resistants in the administration of justice.

12. As early as 1955, in the opinion reported as AIR 1955 SC 425 *Sangram Singh vs. Election Tribunal*, the Supreme Court opined that:-

> "Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it."

13. In the report published as AIR 1998 SC 1827 *Shreenath & Anr. vs. Rajesh & Ors.*, it was held that procedural law should not ordinarily be construed as mandatory; that procedural law is always subservient and is in aid to justice. An

interpretation which alludes or frustrates the recipient of justice is not to be followed.

14. With the aforesaid backdrop of the understanding of the procedural laws, I fish in the troubled water of the facts.

15. Petitioners are the plaintiffs in a suit seeking a decree, inter alia, for specific performance of an immovable property bearing No.82, Jor Bagh, New Delhi. The defendants in the suit are Mrs. Suraj Kumari, Mr.Sushil Ansal, Mr.Gopal Ansal, Mr. Deepak Ansal (her 3 sons) and one Mr.Rajiv Chander Agarwal.

16. The suit was filed on the original side of this Court and was last heard in this Court by a learned Judge on the original side on 6.9.2000.

17. Noting that there was a change in the pecuniary jurisdiction of this Court i.e. it was enhanced and there was a corresponding enhancement in the pecuniary jurisdiction of the District Courts the suit was ordered to be transferred to the District Judge to be assigned to a Court of competent jurisdiction. Parties were directed to appear before the District Judge on 2.11.2000.

18. Defendant No.1, Mrs.Suraj Kumari died on 15.10.2000 i.e. in between the date 6.9.2000 and 2.11.2000.

19. On 2.11.2000 the learned District Judge assigned the suit to a learned Additional District Judge who happened to

be on leave. The reader of the Court recorded an order dated 2.11.2000 adjourning the matter for 1.12.2000. On said date i.e. 1.12.2000 matter was adjourned for 25.1.2001.

20. According to the petitioners i.e. the plaintiffs they had filed an application in November 2000 stating that defendant No.1 had died and was survived by her 3 sons, already impleaded as defendants No.2 to 4 in the suit and 3 daughters namely Ms.Leela Abbi, Ms.Indra Puri and Ms.Meenakshi Verma. Accordingly, the prayer made was to implead the 3 daughters of deceased defendant No.1 as defendants and additionally to note that the other 3 legal heirs i.e. the sons were already on record as defendants No.2 to 4. Said application was stated to be filed under Order 22 Rule 4 CPC.

21. According to the petitioners said application which was handed over to the reader of the court was not put in the file by the reader. Thus when the learned Judge took up the suit for consideration on 25.1.2001 and it was noted that the application was not on record the aforesaid fact was brought to the notice of the Judge who queried from the counsel for the defendants whether it was true. That counsel for the defendants accepted that he had received the application under Order 22 Rule 4 CPC seeking impleadment. According to the plaintiffs the Judge simply renotified the matter for

26.2.2001, orally observing that the plaintiffs may place on record a copy of the said application.

22. In between 1.12.2000 and 25.1.2001 Kushagr Ansal grandson of the deceased filed an application under Section 151 CPC stating that his grandmother had executed a will dated 11.5.1999 and as per the will had bequeathed her share in the suit property to him.

23. The said application dated 9.1.2001 (at pages 608-611) of the record of the Trial Judge makes no prayer. It is in the nature of an information to the Court and the parties that the applicant claims inheritance to the share of the deceased in the suit property under the will.

24. In the record of the learned Trial Judge I find a photocopy of an application (at pages 612 – 617) purporting to be dated November 2000 stating about the death of deceased defendant No.1 and praying that her sons were already impleaded as defendants No.2 to 4, thus her 3 daughters be impleaded as defendants.

25. On 19.2.2001 an application was filed by the plaintiffs under Order 22 Rule 4 CPC read with Section 5 of the Limitation Act stating therein that on 25.1.2001 when it was noted that earlier application filed by the plaintiffs in November 2000 for impleadment of the legal heirs of deceased defendant No.1 was not on record, the learned Judge orally directed that

the plaintiffs should file another application. Accordingly, it was stated that the application in question was filed praying that delay in filing the application under Order 22 Rule 4 CPC be condoned and legal representatives of deceased defendant No.1 be brought on record. In paras 4 to 6 of the said application following has been averred:-

> "4. Pursuant to the orders of District Judge, the matter was directed to be listed before this Hon'ble Court on 2.11.2000. On the said date the Hon'ble Presiding Officer of this Court was on leave and the matter was adjourned to 01.12.2000. In the meanwhile, the plaintiffs learnt that the defendant No.1 namely Smt.Suraj Kumari died on 15.10.2000. The plaintiffs accordingly made an application under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure for bringing the legal representatives of defendant No.1 on record.
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> 5. Pursuant to the transfer of the matter to this Hon'ble Court, the plaintiffs engaged Sudhir K. Makkar, Adv. and entrusted him with the matter. The counsel for the plaintiffs prepared an application for bringing the legal representatives on record and after getting the same duly signed by the plaintiffs, the counsel for the plaintiff sent the said application along with duly signed vakalatnama, through his associate Sh.B.K.Chauhan, Advocate, for being filed before this Hon'ble Court. Sh.B.K.Chauhan filed the said application with this Hon'ble Court about 2 to 3 days before the scheduled date of hearing being 01.12.2000. Sh.B.K.Chauhan was informed that the application shall be listed along with the main matter on the next date of hearing which was 01.12.2000.
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> 6. On 01.12.2000, the counsel for the plaintiffs was held up in some other work and

> Sh.Ashwal Vaderaa, Adv. was to attend the matter on behalf of the counsel for the plaintiff. Sh.Ashwal Vaderaa reached this Hon'ble Court a little late and was informed that the proceedings in the matter had been adjourned to 25.01.2000."

26. Cognizance of the aforesaid application has been taken by the learned Judge by recording on the application itself that it would be taken up for consideration on 20.2.2001. On 20.2.2001 an order was passed directing notice to be issued to the defendants. The notice was made returnable for 26.2.2001 the date already notified.

27. It is the case of the plaintiffs that when the learned Judge noted the pleadings in the application dated 19.2.2001 he was of the opinion that reference in the application to the verbal directions stated to have been given by the Judge on 25.1.2001 and what transpired in the Court on said date should be removed. The plaintiffs were advised to file another application under Order 22 Rule 4 of the Code of Civil Procedure by deleting reference to what transpired in Court on 25.1.2001. According to the plaintiffs they agreed to do so. Accordingly, a third application under Order 22 Rule 4 CPC dated 25.4.2001 came to be filed which was taken up for consideration on the next date i.e. 26.4.2001.

28. On 26.4.2001 following order has been recorded by the learned Judge:-

> "The counsel for the plaintiff has moved an application for condonation of delay in

application U/O 22 Rule 4 CPC. Copy given to counsel for the defendant and it is stated that the counsel for the defendant has no objection for the condonation of delay part of this application. To come up for reply to the application for dated 06.07.2001. It is stated by the counsel for the plaintiff that on the same subject matter the earlier application was also moved which not not being pressed, and is dismissed as withdrawn."

29. In this third application (pages 618 – 621 of the LCR) it has been, inter alia, pleaded in para 5 and 6 as under:-

> "5. The matter was listed on 25.01.2001 when it was learnt that the application filed by the plaintiffs for bringing on record the legal representatives of defendant No.1 was not traceable on record. The application has been apparently misplaced and could not be traced despite this Hon'ble Court having directed the Court Master and Ahlmad to trace the said application.
>
> 6. The applicants/plaintiffs have already filed another copy of the application for bringing the legal representatives on record on 28.01.2001 which is on record. The Applicants submit that in fact there is no delay in filing of the application. However, since the applicants have placed a fresh copy of the application on record on 28.01.2001, in view of the original application having been misplaced, the technical delay, if any, may be condoned in view of the foregoing submissions. It is submitted that till 25.01.2001 the counsel for the plaintiffs was under a bona fide impression that the application filed by the plaintiffs for bringing on record the legal representatives of defendant No.1 was already on record."

30. One fact has emerged. That the learned Judge was not exercising proper care over his staff. The staff was not placing the applications on record. This is evident by the fact that application filed on 19.2.2001, receipt whereof was noted

by the Judge in the order dated 20.2.2001 has been placed in the file after second application was received by the learned Judge on 26.4.2001.

31. Thereafter, various dates were consumed to complete pleadings in the application under Order 22 Rule 4 CPC filed by the plaintiffs which was received by the learned Judge in Court on 26.4.2001.

32. Matter was renotified from time to time. On 25.2.2002 plaintiffs filed another application under Order 22 Rule 4 CPC praying that in view of the fact that Kushagr Ansal was staking a claim under a will stated to have been executed by deceased defendant No.1 and that the 3 sons and the 3 daughters of the deceased had accepted the will evidenced by the reply filed by them to the applications filed by the plaintiffs under Order 22 Rule 4 CPC, Kushagr Ansal should be impleaded as a legal heir of the deceased.

33. As noted herein above, vide 2 orders of even date i.e. 17.9.2003, application filed by the plaintiffs seeking impleadment of the 6 children of the deceased as legal heirs as also application filed on 25.2.2002 for impleadment of Kushagr Ansal were dismissed.

34. I note that the first order records as if only one application i.e. the application which was received by the Judge in Court on 20.2.2001 was required to be decided.

35. The order records dismissal of said application.

36. Vide the second order passed on the same date it was held that since no prayer was made for setting aside of the abatement and since application dated 25.2.2002 was filed much beyond 60 days and even 90 days thereafter i.e. 150 days of the death of the deceased, the said application was also dismissed.

37. The result of the 2 orders is that legal heir of deceased defendant No.1 not being brought on record, the inevitable conclusion would be that the suit would stand abated qua defendant No.1. Since the cause of action pleaded in the suit is joint against defendants No.1 to 4, the suit would abate as a whole.

38. I think, I have reached the stage to deal with the legal issues which have been advanced by learned counsel for the parties.

39. At the forefront is the challenge of the respondents to the maintainability of the civil revision petition on 2 counts. Firstly, it is urged that the impugned orders cannot be questioned under the revisional powers of this Court.

40. Reliance has been placed upon the decision of the Supreme Court in AIR 2003 SC 2324, *Shiv Shakti Cooperative Housing Society vs. Swaraj Developers*.

41. I need not waste my time dealing with the said

preliminary objection, for the reason as noted above, effect of the impugned order is that the suit would stand abated. Thus, the impugned orders result in finality to the suit. In *Shiv Shakti's* case (supra), Supreme Court has held that only such orders which result in the final disposal of the suit are amenable to the revisional jurisdiction of this Court. Thus, I hold that the revision petitions are maintainable.

42. A second attack to the jurisdiction of this Court has been predicated on a very ingenuous argument. It merits a consideration. Shri A.S.Chandhiok, learned senior counsel for the respondents urged that admittedly, application which has been decided vide order dated 17.9.2003 dismissing petitioner's application under Order 22 Rule 4 CPC was the one which was filed in the Court on 25.2.2002 seeking impleadment of Kushagr Ansal as a legal heir of the deceased.

43. Learned senior counsel urged that notwithstanding the label of the application i.e. an application under Order 22 Rule 4 CPC, since the application was filed much beyond even 150 days of the death of the deceased, the application had to be treated as invoking a remedy under Order 22 Rule 9 CPC.

44. Learned senior counsel urged that inasmuch as abatement of the suit had not been set aside and the sine qua non for impleading Kushagr Ansal as a legal heir of the deceased was to firstly set aside the abatement, order had to

be treated as one passed under Order 22 Rule 9 CPC and in view of the Order 43 Rule 1 (k), an appeal was maintainable against the said order. Thus, on account of availability of an effective alternative remedy, it was prayed that the civil revision petition was not maintainable.

45. The said preliminary objection requires to be considered along with the merits of the controversy, for the reason, as recorded above, 3 prior applications exist on record invoking Order 22 Rule 4 CPC. The first is a copy of an application under Order 22 Rule 4 CPC bearing the date November 2000, available in the record of the learned Trial Judge at pages 612 to 615, original whereof is stated to have been filed but misplaced. The second is the application once again invoking Order 22 Rule 4 CPC received by the learned Judge on 19.2.2001, original copy available at pages 623 to 627 of the record of the learned Trial Judge followed by the third application once again invoking Order 22 Rule 4 CPC taken on record by the learned Trial Judge on 26.4.2001 stating that since application filed in November 2000 was not available on record said application was being filed so that impleadment of legal heirs of deceased defendant No.1 could be effected.

46. I find from the record of the learned Trial Judge that at pages 630-633 there exists a reply dated 9.1.2001 by the daughters of the deceased defendant No.1 to an application

under Order 22 Rule 4 CPC filed by the plaintiffs. The reply bearing the date 9.1.2001 has been filed in Court on 9.8.2001.

47. It is thus apparent that the reply has been filed to an application under Order 22 Rule 4 CPC received by the daughters of the deceased defendant No.1 prior to 9.1.2001. This reply can only be to the application which plaintiffs claim was filed in Court in November 2000, copy whereof was refiled and is available at pages 612-615 of the record of the learned Trial Judge.

48. It is thus apparent that the 2nd application under Order 22 Rule 4 CPC filed on 19.2.2001 followed by the third application dated 26.4.2001 were filed inasmuch as the application filed in November 2000 was misplaced (subsequently photocopy placed on record). The second and the third applications are surplus applications.

49. The 4th application filed on 25.2.2002 under Order 22 Rule 4 CPC seeking impleadment of Kushagr Ansal can be treated as an application in continuation of the application filed in the month of November 2000. Such an interpretation would further the cause of substantive justice and a contrary view would impede the cause of substantive justice.

50. Had the learned Trial Judge been vigilant and had it been noted that the daughters of the deceased had prepared a reply dated 9.1.2001 to an application filed by the plaintiffs

under Order 22 Rule 4 CPC it would have dawned upon him that within 60 days of the death of the deceased an application under Order 22 Rule 4 CPC had been filed.

51. I may additionally note that in the subsequent applications filed by the plaintiffs under Order 22 Rue 4 CPC, averments of the plaintiffs in said applications noted in para 25 and 29 above pertaining to the filing of an application under Order 22 Rule 4 CPC in the month of November 2000 have not been denied by the respondents.

52. Thus, there is no question of the suit having abated.

53. Technically, the second preliminary objection urged by learned counsel for the defendants may appear sound, but a deeper meaningful probe, stripping the contention of the technicalities of law, would reveal that the plaintiffs have suffered due to a sloppy maintenance of the Court record by the Court reader coupled with lack of supervision by the learned Judge.

54. In the facts and circumstances the maxim of equity, viz., *actus curiae neminem gravabit* – an act of Court shall prejudice no man, shall be applicable.

55. The maxim is founded upon justice and good sense and serves a safe and certain guide for the administration of law.

56. I accordingly hold that in sum and substance what

was required to be considered on account of death of deceased defendant No.1, pertaining to the cause of action surviving was the application filed by the plaintiffs in the month of November 2000 before the learned Trial Judge.

57. The subsequent applications under Order 22 Rule 4 CPC were at best reminder to the learned Judge that the plaintiffs had filed an application under Order 22 Rule 4 CPC in the month of November 2000. That such an application was handed over to the reader with copy supplied to counsel for the defendants is evident from the reply dated 9.1.2001 filed by the 3 daughters of the deceased in August 2001. As noted herein above, by 19.1.2001 only 1 application could have reached the hands of said legal heirs, viz, the application which plaintiffs claim to have handed over to the reader of the Court in the month of November 2000.

58. As regards the 4th application filed under Order 22 Rule 4 CPC wherein impleadment of Kushagr Ansal was prayed for, a purposive meaning to the application which has to be assigned is that the said application has to be treated as supplementing the averments of the plaintiffs in the application under Order 22 Rule 4 CPC filed in the month of November 2000.

59. Matter could be looked at from another angle. Kushagr Ansal filed an application on 25.1.2001 informing that

he was the sole surviving heir of the deceased.

60. His application can be treated as a prayer by him to be impleaded as a legal heir of the deceased.

61. Can it not be argued that where a legal heir himself comes forward and informs to the Court, by way of a written application that he is the legal heir, cannot said application be treated as an application under Order 22 Rule 4 CPC?

62. Sub rule (1) of Order 22 Rule 4 CPC reads as under:-

> "**4. Procedure in case of death of one of several defendants or of sole defendant.-** (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit."

63. The language of the aforesaid legislative provision does not mandate that the application envisaged by the said legislative provision has to be filed by the plaintiffs. For good reasons, the legislature has used the expression '*on an application made in that behalf*'. It has not been mandated that the application has to be filed by the plaintiffs. Thus, a legal heir may come forward and move the requisite application.

64. I have noted herein above the decisions of the Supreme Court pertaining to the interpretation of procedural laws. I have noted herein above the principles applicable

where a Court is responsible for creating a situation.

65. The summary of the events and the story as it has unfolded, recorded in detail in the preceding paras herein above, compels this Court to do substantive justice and not electrocute the plaintiffs due to a defective Court mechanism where the reader of the Court failed to preserve the purity of the record, to quash the impugned orders dated 17.9.2003 which are challenged in the 2 captioned petitions. I hold that there is no question of abatement arising, neither impugned order can be treated as one under Order 29 Rule 9 CPC. The impugned orders have to be treated under Order 22 Rule 4 CPC and since the first application was filed in the month of November 2000, well within 60 days of the death of the deceased and further holding that the application filed on 25.2.2002 has to be read in furtherance of the application filed in the month of November 2000, I allow the civil revision petitions.

66. Both impugned orders are quashed. Application filed by the plaintiffs for impleadment of Kushagr Ansal as the legal heir of deceased defendant No.1 is allowed taking on record that the sons and daughters of deceased have accepted his claim under the will executed by their mother i.e. grandmother of Kushagr Ansal.

67. Before concluding I may note that learned counsel

for the parties had addressed arguments with respect to Section 211 of the Indian Succession Act as also Section 231 of the Indian Succession Act; arguments being that under Section 211 of the Indian Succession Act, the executors appointed under a will are the legal representatives of the deceased and since the will relied upon by Kushagr Ansal appoints the 3 sons of the deceased as executors, they were already on record as defendants No. 2 to 4 and therefore the legal representatives of the deceased being already on record no substitution was required. This was the argument advanced by Shri Shanti Bhushan, learned senior counsel for the plaintiffs. It was sought to be countered by learned senior counsel for the respondents who urged that under Section 234 of the Indian Succession Act, where the executors decline to execute the will they cannot be treated as the legal representatives and the beneficiary under the will would have to be treated as the legal representative. Mr.A.S.Chandhiok, learned senior counsel for the respondents had urged that inasmuch as the 3 sons had not volunteered to execute the estate of the deceased, their presence cannot be treated as presence by the legal representatives of the deceased.

68. I need not deal with the said contentions for the reasons, in my opinion, in the facts and circumstances of the instant case and the view which has been taken by me, said

issue does not arise for consideration.

69. No costs.

July 23, 2007 **(PRADEEP NANDRAJOG)**
dk' **JUDGE**